

REMARKS

In the Office Action mailed 4 December 2008, the Examiner reviewed claims 1-122. Claims 1-83 and 87-122 are withdrawn from consideration. The Examiner has rejected claims 84-86 under 35 U.S.C. §102(b).

Applicant has amended claim 84 to specifically point out and claim that the claim relates to structure designed for use within a blood vessel, the blood vessel being inherently filled with a liquid under pressure.

Rejection of Claims 84-86 under 35 U.S.C. § 102(b)

The Examiner has rejected claims 84-86 under 35 U.S.C. § 102(b) as anticipated by Parodi (US 6,206,868).

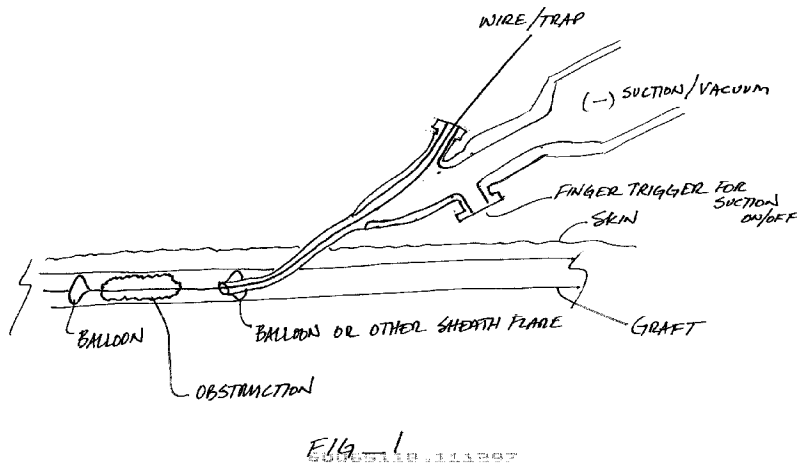
The Priority Date for Parodi Re: Claims 84-86

The Parodi reference claims to be a continuation in part of a PCT application filed on 12 March 1999 and a continuation in part of US patent application number 09/078,263 filed on 13 May 1998, now US patent number 6,413,235 (sometimes referred to as the 235 patent). A review of the 235 patent shows nothing similar to the annular balloon structure shown in Parodi. Accordingly, the effective filing date of Parodi with respect to claims 84-86 is not 13 May 1998, but is at the earliest 12 March 1999.

Support of Present Claims

The Examiner has taken the position that claims 84-86 are not fully supported by any of the priority applications and therefore do not get the benefit of any of their filing dates. In particular, the Examiner states "the figures do not depict a balloon mounted on the end of the shaft and extending distally past the shaft when inflated. Accordingly, claims 84-86 are not entitled to the benefit of the prior applications and so the effective filing date will be considered as 04/15/04." Applicant disagrees because, as discussed below, that although figure 1 may have been somewhat inartfully drawn for the present purposes, the combination of the written description and figures of the original provisional application filed on 12 November 1997 would support a figure similar to figure 2 of such provisional application in which the "sheath flare mechanism" shown in figure 2 was replaced by a balloon-type sheath flare mechanism.

1. Provisional application number 60/065,118 was filed on 12 November 1997, prior to the 13 May 1998 filing date of the Parodi reference. This provisional application states in part: "Fig. 1 is an illustration of the device using an inflatable balloon (Fig. 1 shows the balloon in its deployed or inflated condition). ... Fig 1 also shows a balloon being used on the distal end of the sheath, however in all cases this flared mechanism may be of any type and may not be required at all. ... Note that all systems include a flare on the distal end of the sheath, but this may not be required." (Page 2, lines 30-34 and 44-46, emphasis added.) Figures 1 and 2 are duplicated below and respectively show a balloon and a sheath flare mechanism at the distal end of the sheath.



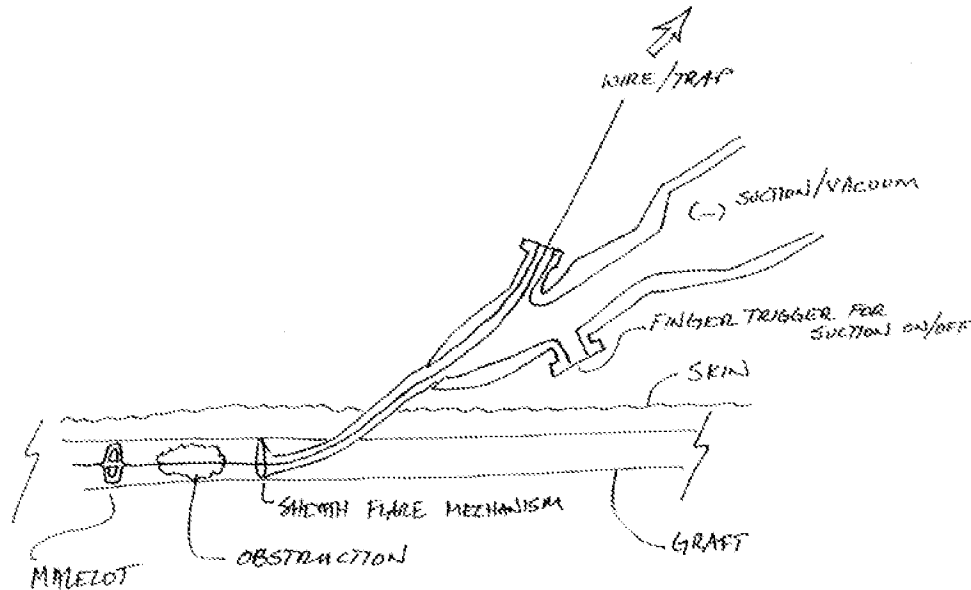


Fig. 2

Accordingly, although the Examiner is correct in that the figures do not explicitly depict a balloon mounted on the end of the shaft and extending distally past the shaft when inflated, the text of the provisional application specifies that

- all systems include a flare at the end of the sheath, and
- balloons may be used as a type of flare mechanism, and
- figure 2 shows the flare extending distally past the shaft.

Therefore Provisional application number 60/065,118 fully supports claim 84 in which a balloon is mounted to the distal end of the shaft and extends distally past the shaft.

2. Applicant's second priority application, that is US patent application number 09/189,574 (sometimes referred to as applicant's 574 application), now US patent number 6,238,412, was filed on 11 November 1998. This is well before the 12 March 1999 filing date of the PCT application and the June 14, 1999 filing date of Parodi. Figures 5-8 of applicant's 574 application show structure that fully support claims 84-86.

Claims 84-86 Are Allowable over the Cited Art

As discussed above, claims 84-86 obtain the benefit of at least to the filing date of the 574 application, which is 11 November 1998. The 235 patent does not show any of the type of

the annular balloon structure shown in the Parodi reference so that Parodi does not get the benefit of the filing date of the 574 application. Therefore, Parodi is not an effective reference against claims 84-86.

Accordingly, withdrawal of the rejection of claims 84-86 is respectfully requested.

CONCLUSION

It is respectfully submitted that this application is now in condition for allowance, and such action is requested.

The Commissioner is hereby authorized to charge any fee determined to be due in connection with this communication, or credit any overpayment, to our Deposit Account No. 50-0869 (GTEC 1002-1).

Respectfully submitted,

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/James F. Hann/
James F. Hann, Registration No. 29,719

HAYNES BEFFEL & WOLFELD LLP
P.O. Box 366
Half Moon Bay, CA 94019
Telephone: (650) 712-0340
Facsimile: (650) 712-0263